# The Secure Annuities for Employee (SAFE) Retirement Act of 2013

#### TITLE I - Public Pension Reform

Title I of the SAFE Retirement Act creates a new pension plan, called the SAFE Retirement Plan, with stable, predictable costs that State and local governments may use to deliver lifetime, defined benefit retirement income for employees.

### **Key Features:**

- Employees receive a secure pension at retirement for life.
- Employees receive a pension that is portable and 100% vested.
- Employer pension costs are stable and affordable.
- Pension plan underfunding is not possible.
- The life insurance industry pays the pensions and bears all of the investment risk.
- Pensions are protected by a robust State regulatory system and financial backstop.

In a SAFE Retirement Plan, an employer pays a premium each year, in an amount equal to a fixed percentage of payroll, to a State-licensed life insurance company. Employees receive an individual, deferred fixed income annuity contract each year from the life insurance company, thereby building an annuitized pension year-by-year during their working lives. After the annual premium is paid, the employer has no future liability because the employee will have received an individual fixed income annuity contract from the life insurance company. The life insurance company is responsible for investing the premiums and will be contractually bound to pay the fixed monthly pension when the employee reaches retirement age.

A SAFE Retirement plan works like a defined benefit pension plan from the perspective of the employee, delivering secure monthly income at retirement for life. It works like a defined contribution pension plan from the perspective of the employer, providing cost closure at the end of each year. The year-by-year accumulation of annuity contracts during the employee's working life evens out the effect of fluctuating interest rates on the amount of the final pension. All pension liabilities are assumed by the insurance industry; therefore, the plan can never be underfunded.

The annuity contracts will be competitively bid and the bidding process will ensure good pension levels. The life insurance companies will be supervised by State Insurance Departments. The life insurance industry is reliably solvent because State insurance regulations are strict, with stringent reserve requirements and conservative investment standards. In the rare event that a life insurer becomes insolvent, each State has a life insurance guaranty association that will ensure the payment of annuity benefits to retirees. State guaranty associations have an excellent track record and require no federal or State tax support.

The adoption of a SAFE Retirement Plan will eliminate pension plan underfunding while delivering lifetime retirement income to employees. SAFE Retirement Plans are a State regulated, market based, fixed annuity solution to the retirement income crisis in the States, with only minimal involvement by the federal government and no federal taxes.

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#### Title II - Private Pension Reform

Title II of the SAFE Retirement Act creates a new 401(k) plan, called the STARTER 401(k) Plan, for small and start-up companies that do not already sponsor a retirement plan. The STARTER 401(k) plan, funded solely with employee wage deferrals, will be especially useful to entrepreneurial start-up companies that must devote all of their resources to building their business in the early years.

Title II includes several additional provisions that will help small and medium size businesses sponsor 401(k) plans. Among the more significant reforms are those pursuant to which:

- Outdated barriers to the use of Multiple Employer Plans (MEPS) are eliminated. MEPS allow unrelated employers to pool their pension plan money to obtain better investment results.
   There is a longstanding desire by small businesses for this reform.
- Employers are allowed to adopt a retirement plan on or before the due date of the
  employer's tax return and the plan will be treated as if it had been adopted on the last day
  of the previous year. This allows employers the flexibility of waiting until they know their
  year-end financial results before committing to a new retirement plan.
- The maximum small employer pension plan a tax credit is increased from \$500 to \$5000.
- The 10% auto-escalation upper limit in an Auto-Enrollment 401(k) plan is eliminated.
- The ability of employers to offer annuities to 401(k) plan participants is expanded.
- The hardship distribution rules for 401(k) plans and IRAs are simplified.
- The number of reports filed with Treasury and the Department of Labor are consolidated.
- The voluntary pension law violation correction program is expanded.
- Employers are allowed to provide employee notices electronically.

The reforms in title II were developed in consultation with the business community to ensure that every reform in the legislation is helpful to small and medium size business.

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### Title III - IRA Regulation Reform

Title III of the SAFE Retirement Act preserves access to professional investment advice for IRA owners, especially those with modest account balances, by preventing the Secretary of Labor from over-regulating IRA investment advice.

The Secretary of Labor is set to propose a regulation dramatically expanding the ERISA fiduciary duty and prohibited transaction rules applicable to pension plans and 401(k)s. In addition, the Secretary wants to extend the new and restrictive rules to IRAs, which will cause investment advisors to stop providing advice to many IRA owners. There have been a number of letters from Members on both sides of the isle imploring the Department of Labor (DOL) to reconsider the issuance of the expansive and burdensome regulations. In light of the DOL's intransigence, title III of the SAFE Retirement Act includes a legislative solution to the problem.

#### **IRAs**

The IRA prohibited transaction rules are codified solely in the Internal Revenue Code and prohibit transactions that involve self-dealing and conflicts of interest. Prior to the issuance of a 1978 Executive Order, Treasury had jurisdiction over the IRA prohibited transaction rules governing investment advice. The 1978 Order transferred jurisdiction to the DOL.

Title III restores jurisdiction for IRA prohibited transaction rules to the Treasury Department. In addition, Treasury will be required to consult with the Securities and Exchange Commission in prescribing rules relating to the professional standard of care owed by brokers and investment advisors to IRA owners.

#### 401(k)s

The 1978 Executive Order also transferred some of the Treasury Department's joint Jurisdiction over the prohibited transaction rules applicable to retirement plans to the DOL. Title III restores joint Jurisdiction for retirement plan prohibited transaction regulations to the Treasury Department and DOL. Joint jurisdiction makes sense in light of the DOL proposal to expand the rules because Treasury must enforce prohibited transaction violations through the assessment of excise taxes. Treasury should have a role to play in any expansion of the rules because expanded rules will mean more excise tax cases for the IRS to process.